IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
LETTERS PATENT APPEAL NO.189 OF 2005

The Municipal Co-operative Bank Ltd.
Mumbai & Anr. .. Appellants.

Vs.

Mr.Ganpat Yesu Kadam, Nerul,
Mumbai 400 706. .. Respondent.

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S/Shri P.K.Rele with N.M. Makandor i/b P.N.Shastri for the Appellants.

Shri Amol B. Desai for the Respondent.

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CORAM : R.M.S.KHANDEPARKAR &
S.R.SATHE, JJ.

DATED : 17TH APRIL, 2006

P.C.

1. Heard the learned advocates for the appellants and the respondent.

2. The appellants challenge the order dated 11th August, 2005 passed by the learned Single Judge in the Writ Petition No.3756 of 2005. By the impugned order, the learned Single Judge has allowed the writ petition and has set aside the order dated 20th November, 2003

passed by the Industrial Court at Mumbai in Complaint (ULP) No.75 of 2002. The Industrial Court had refused to condone the delay in filing the said complaint. The learned Single Judge, however, has allowed the application for condonation of delay in filing the said complaint, leaving the parties to contest the proceedings on merit.

3. Placing reliance in the decision of the Apex Court in **P.K.Ramachandran v. State of Kerala & Anr.**, reported in AIR 1998 SC 2276, learned senior counsel appearing for the appellants submitted that the learned Single Judge erred in ignoring the clear finding arrived at by the Industrial Court while rejecting the application for condonation of delay to the effect that the claim of the respondent that he came to know about 1992 settlement in the year 1998 was unbelievable, and therefore, there was no sufficient cause for condonation of delay.

4. Plain reading of the order passed by the Industrial Court discloses that apart from the observation that the respondent is an educated person and he was designated as Junior Officer working in a responsible post and that therefore it is unbelievable that he did not know the terms of the settlement of

the year 1992 till the year 1998, the application had been rejected on the ground, in the circumstances of the case, that the question which arose for consideration was whether there was any existing right for the respondent to claim relief on the basis of the settlement of the year 1992. Obviously, the application for condonation of delay was rejected on two grounds. Firstly that the main question to be decided was whether the respondent was entitled for any relief on the basis of the 1992 settlement and secondly on the ground that because the respondent was occupying a responsible post, his claim that he came to know about the 1992 settlement in the year 1998 was unbelievable.

5. On the other hand, the learned Single Judge has clearly observed in the impugned order that in the application for condonation of delay the respondent had categorically stated that he became aware of the 1992 settlement only in 1998 when the second settlement was signed granting certain increments. The records also disclosed that immediately after having learnt about the 1992 settlement in the year 1998, the respondent addressed a letter dated 27th May, 1998 to the management claiming the benefits in terms of the 1992 settlement, however, the same was

rejected by the management in June, 1998. The respondent pursued the matter by way of correspondence with the management and ultimately served the advocate's notice in June, 2001 upon the management and then filed the writ petition being Writ Petition No.2086 of 2002 in this Court, which came to be rejected solely on the ground that the appellant No.1 herein is not the "State" within the meaning of the said expression under Article 12 of the Constitution of India. Thereafter, the respondent filed complaint before the Industrial Court. The learned Single Judge, upon considering all these facts, has observed that the respondent all throughout was pursuing the wrong remedy by filing a writ petition, and having realised the same, he filed the complaint in question before the Industrial Court with an application for condonation of delay. Taking into consideration the said fact, the learned Single Judge has held that sufficient cause was disclosed for delay in filing the complaint, and therefore, obviously, the Industrial Court having illegally refused to exercise its discretion judiciously, interfered in the order passed by the Industrial Court and has set aside the same. By the impugned order, apparently, it discloses that the learned Single Judge has exercised her discretion judiciously in interfering with the improper and

unsustainable order passed by the Industrial Court.

6. Bare reading of the order of the Industrial Court discloses that instead of considering the point as to whether there was sufficient cause for condonation of delay, the Court proceeded to decide whether the respondent had shown right to claim benefit under 1992 settlement. Obviously, the same will have to be decided on merits. It was too premature for the Industrial Court to consider the said issue while ascertaining whether there was sufficient cause for delay.

7. The decision of the Apex Court in **P.K.Ramchandran's case (supra)**, nodoubt, lays down the law that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. The said ruling has no application to the facts of the present case, more particularly, in view of the provisions of Section 5 of the Limitation Act being applicable to the proceedings before the Industrial Court. Being so, though there is a period of limitation prescribed for filing the complaint, at the same time, the delay in that regard

can be condoned by exercise of powers under the provision of Section 5 of the Limitation Act; it would not amount to extension of period of limitation.

8. However, the learned senior counsel for the appellants is justified in submitting that the learned Single Judge could not have observed in the impugned order that "it is for the Industrial Court to decide whether the Petitioner should be given the increment right from the year 1990 as prayed for in the Complaint or any date thereafter", as the said observation could be misinterpreted by the Industrial Court to mean a direction to the Industrial Court to grant increment to the respondent under any circumstances. The observation in that regard should and ought to have been that it is for the Industrial Court to decide the question whether the petitioner is entitled for increment in terms of the 1992 settlement or not? The Industrial Court while dealing with the complaint ought not to be influenced by the said observation in the impugned order and should consider the claim of the respondent on merits in accordance with the provisions of law. Apart from this observation, no interference is called for in the impugned order of allowing the application for

condonation of delay in filing the complaint, and therefore, the appeal is liable to be dismissed along with the above observation. The appeal is accordingly dismissed with no order as to costs.

9. It is made clear that this Court has not expressed any opinion on any of the points sought to be raised in this appeal on the merits of the case and the same are kept open to be decided by the Industrial Court.

(R.M.S.KHANDEPARKAR, J)

(S.R.SATHE, J)